

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)	
)	
Petition by the Colorado Public Utilities)	
Commission, Pursuant to 47 C.F.R.)	
§ 54.207(c), for Commission Agreement)	CC Docket No. 96-45
in Redefining the Service Area of)	
CenturyTel of Eagle, Inc.,)	
A Rural Telephone Company)	
Petition by the Colorado Public Utilities)	
Commission, Pursuant to 47 C.F.R.)	
§ 54.207(c), for Commission Agreement)	CC Docket No. 96-45
in Redefining the Service Area of)	
Delta County Tele-Comm, Inc.,)	
A Rural Telephone Company)	

**REPLY COMMENTS BY THE COLORADO PUBLIC UTILITIES
COMMISSION**

The Colorado Public Utilities Commission (COPUC), by and through its attorneys, submits these comments in reply to the February 6, 2003 comments by Delta County Tele-Comm, Inc. (Delta), the National Telecommunications Cooperative Association (NTCA), and the United States Telecom Association (USTA). For the reasons stated here and in prior comments filed in these cases,¹ COPUC affirms its request for Commission agreement to redefine the service areas for Delta and for CenturyTel of Eagle, Inc. (CenturyTel).

SUMMARY

The Commission should concur with COPUC's requests to redefine Delta's and CenturyTel' service areas to the wire center level as proposed in the Petitions. The arguments in opposition to the Petitions are misguided and misplaced. First, Delta, NTCA, and USTA suggest that the policy of encouraging competition in local exchange markets, as articulated in the Telecommunication Act of 1996 (Act), does not apply to rural incumbent local exchange providers. In essence, the parties argue for a presumption *against* competition for rural carriers. This argument is incorrect. The Act and Commission decisions implementing the Act articulate a national policy of promoting competition even in rural areas. While state commissions and the Commission itself must follow certain guidelines and procedures before allowing competitive entry in rural service areas (*i.e.* before designating competitive eligible telecommunications carriers

¹ COPUC has filed two separate Petitions requesting Commission agreement to redefine the service areas of Delta County Tele-Comm, Inc. and CenturyTel of Eagle, Inc. In addition, COPUC has previously filed Reply and Supplemental Comments in each Petition proceeding.

(ETC) in rural areas), it is, nevertheless, the Act's intent to encourage competition even in these areas.

The parties envision apocalyptic consequences if the Commission concurs in the Petitions: there is a "growing crisis" in universal service support;² universal service funding "could be dead" if the Commission agrees with Petitions at this time;³ there is a current "explosion" of new claims on the universal service fund;⁴ and agreement with the Petitions could result in "irreparable harm" to rural companies.⁵ These hyperbolic claims are absolutely unsupported here, and, moreover, are not for consideration or resolution in these cases--cases which concern only COPUC's requests to redefine the service areas of two rural companies in Colorado *under existing rules and policies*. The concerns expressed by the parties, exaggerated as they are, are misplaced because they relate to general questions and issues well beyond the scope of these cases. Suggestions that the Commission revise generally applicable universal service policies and rules are matters for separate proceedings. Indeed, as the comments point out, the Commission has, in a separate case, requested that the Joint Board review universal service support mechanisms and make recommendations to the Commission.⁶ The host of issues raised in the pending Joint Board proceeding (and by the comments) regarding general universal service policies must be decided there, not in these Petition cases.

² Delta comments, page 17.

³ Delta comments, page 17.

⁴ Delta comments, page 22.

⁵ NTCA comments, page 2.

⁶ *In the Matter of the Federal-State Joint Board on Universal Service*, FCC 02-307 (rel November 8, 2002).

Additionally, most of the objections to the Petitions raised by Delta, NTCA, and USTA relate to designation issues: whether competing eligible telecommunications carriers (ETC) should be designated in rural areas. But, the Petitions do not concern designation of any ETC even for Delta's or CenturyTel's service areas. The Petitions propose to redefine service areas; they do not propose to designate competing ETCs anywhere. The vast majority of objections raised in the comments are irrelevant to the Petitions because they relate to designation issues only, not to whether Delta's and CenturyTel's service areas should be redefined. COPUC, in fact, has designated competing ETCs in some rural areas in Colorado, and when it did so it ensured that such designations were in the public interest. For example, in past designation proceedings, COPUC ensured that competing ETCs offered required services throughout the relevant service area.

COPUC's Petitions comply with the Act and Commission rules. In particular, COPUC has considered the Joint Board's recommendations regarding redefinition of rural companies' study areas. The Petitions themselves explain how disaggregating Delta's and CenturyTel's study areas to the wire center level addresses the Joint Board's primary concern with disaggregating rural study areas, the possibility of creamskimming. The parties opposing the Petitions suggest incorrect standards for consideration of the Petitions. Specifically, the parties make the novel suggestion that COPUC and the Commission must consider future (and as yet non-existent) Joint Board recommendations. Additionally, the parties suggest that the Joint Board itself "must make a recommendation specifically with regard to a particular company as a basis for

consideration by the Commission and the states regarding a change in the definition of service area for a rural carrier."⁷ These remarkable suggestions are plainly mistaken.

A. The Act Intends to Promote Competition Even in Rural Areas

The parties opposed to the Petitions argue that the Act's intent to encourage competition does not apply to rural company service areas. More specifically, the parties contend that nothing in the Act or its legislative history supports the notion that Congress meant to stimulate competitors to seek universal service support in rural telephone service areas. Delta cites statements by Senator Hollings in deliberations on the Act that states "may" protect rural companies from competition. Similarly, Delta notes statements by Senator Dorgan suggesting the need to condition competition in rural areas.⁸ Delta further notes the requirement in § 214(e)(2)⁹ that a state commission may designate an additional ETC in rural areas only if it finds that such designation is the public interest. Part of the public interest requirement, Delta contends, is that a competing ETC serve all of a rural company's study area as contemplated in § 214(e)(1). Based upon these arguments the parties assert that encouragement of competition cannot justify the disaggregation of rural service areas as requested in the Petitions.

COPUC disagrees with the parties' reasoning, and, in particular, their apparent conclusion that the Act establishes a presumption *against* competition in rural service areas. Initially, COPUC notes that the legislative history cited by Delta does not establish Congressional intent to exclude rural areas from the Act's overarching intent to promote competition in telephone markets. Rather, that history merely establishes that state

⁷ USTA comments, pages 4-5.

⁸ Delta comments, pages 11-14.

⁹ 47 U.S.C. § 214(e)(2).

commissions and the Commission itself must be cautious in designating competing ETCs in rural areas.¹⁰ The one specific concern mentioned in the cited legislative history, the remarks by Senator Dorgan, is a concern ultimately reflected in the provisions of § 214(e)(1): a competing carrier must serve the entire area for which designation as an ETC is sought. Because this concern is embodied in § 214(e)(1), any competing ETC designated in a rural area, including in Delta's and CenturyTel's service territories even if the Petitions are granted, will be required to offer supported services throughout the service area. Delta apparently argues that the public interest standard in § 214(e)(2) always requires that a competing ETC serve a rural company's existing study area in its entirety. However, this argument is obviously incorrect in light of § 214(e)(5), which allows a state commission and the Commission to establish a different service for a rural company after taking into account recommendations by the Joint Board.

COPUC notes that the legislative history of the Act does support the conclusion that Congress did intend to encourage competition in rural service areas. According to the Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 113, the purpose of the Act is "to provide for a pro-competitive de-regulatory national policy framework designed to accelerate rapidly the private sector deployment of advanced telecommunications and information technologies and service to all Americans by opening all telecommunications markets to competition..."¹¹ Furthermore, as explained in COPUC's prior comments the

¹⁰ Notably, as discussed in these reply comments COPUC's Petitions are not designation proceedings. So any precautions to be taken in designating additional ETCs in Delta's and CenturyTel's service territories are not matters to be considered here.

¹¹ See discussion in *In the Matter of RCC Holdings, Inc.*, DA 02-3181, paras. 22-23 (Wireline Comp. Bureau, rel. Nov. 27 2002)

Commission itself has articulated the goal of encouraging competition in rural service areas.¹² In short, the intent to promote competition, and, more particularly, to remove barriers to entry relating to Delta's and CenturyTel's service territories,¹³ does justify COPUC's proposals to redefine service areas in these cases. Competition, as a general matter, will give end-users service choices based upon pricing, service quality, customer service, and service availability.¹⁴

The parties opposing the Petitions also suggest that three Commissioners have recently expressed serious questions about the proper relationship between universal service support and competition in rural areas.¹⁵ COPUC disagrees that the cited comments are apposite here. Notably, Chairman Powell's comments question the wisdom of "pro-competitor" (not pro-competition) policies. COPUC emphasizes that eliminating barriers to entry in Delta's and CenturyTel's service territories (by disaggregating their study areas in the same manner these companies themselves disaggregated universal service support), while favoring competition, does not favor competitors over the incumbent carriers.

As for the cited comments by Commissioners Martin and Adelstein, those comments primarily concern designation issues, not issues relating to the disaggregation of rural study areas. For example, according to Delta (comments, page 22), Commissioner Adelstein voiced concern that competing ETCs meet all obligations required by the Act, including the obligations to provide service throughout the service

¹² See COPUC's October 25, 2002 Reply Comments on the Delta Petition, pages 3-4.

¹³ The Petitions explain that, given Delta's and CenturyTel's vast study areas in Colorado, it is highly unlikely that any new entrant could obtain ETC designation in these areas.

¹⁴ See *RCC Holdings, supra*, paragraph 23.

¹⁵ Delta comments, pages 20-22.

area and advertising its availability. COPUC points out that when it has designated competing ETCs it has ensured compliance with the Act's requirements including those noted by Commissioner Adelstein. *See discussion infra.* In any event, Commissioner Adelstein's concerns relate to state commission obligations in designation proceedings, not proceedings to redefine rural study areas.

Finally, the parties suggest that there is no need to redefine Delta's or CenturyTel's service areas in order to promote competition, because wireless carriers are already providing service in these areas. COPUC disagrees. Of course, the point of the Petitions is to encourage competition in the local exchange markets in these areas. While wireless providers may be providing some wireless services in these areas--the comments contain no specifics--this is not equivalent to such providers entering these territories as competing ETCs, and offering all those services required of ETCs.

B. The Pending Proceedings Before the Joint Board Cannot Affect COPUC's Petitions

The comments note that the Commission has initiated a new proceeding (footnote 6) in which the Joint Board is to consider a host of issues relating to the universal service support program including issues such as support for second lines, portability issues, the potential for excessive growth in the fund as competition increases, principles to assure competitive neutrality of support, potential changes to the methods for calculating support in competitive areas, etc. In short, the pending proceeding before the Joint Board is intended to consider broad, wide-ranging policies generally relating to the universal service support. The parties opposing the Petitions contend that the Commission should delay action on the Petitions pending future recommendations from the Joint Board as a

result of the pending proceeding. According to the parties, the Commission is required to consider these future (and as yet non-existent) recommendations by the Joint Board in ruling on COPUC's pending Petitions. The parties contend that designation issues (such as those that may be considered in the new Joint Board case) are "inseverable" from service area issues (such as those presented in the Petitions). This inseverability requires delay in ruling on the Petitions.

COPUC opposes these suggestions. In the first place, the vast majority of issues to be considered in the new Joint Board proceeding are unrelated to the question presented in the Petitions: whether to redefine Delta's and CenturyTel's study areas. In only one sentence (paragraph 10 of November 8 Order) did the Commission request Joint Board consideration of the manner of disaggregating rural service areas. In paragraph 10, the Commission simply requested that the Joint Board consider how "the level of disaggregation of support" should affect new ETCs' request for a service area other than a rural carrier's study area. Nothing in the Commission's Order indicates that existing rules and standards for redefinition of rural service areas may be changed, or that action on pending service area requests should be delayed to await new guidance from the Board. In short, no good reason exists to delay consideration of the Petitions pending the Commission's possible adoption of new national policies relating to the general operation of the universal service program.

In addition, the parties' assertion that designation issues and service area issues are inseverable is mistaken.¹⁶ Legally and logically the two types of proceedings are

¹⁶ And even if the issues were "inseverable" the parties still do not explain why the Commission should not apply existing rules regarding both issues in a timely manner. The possibility that the Joint Board proceedings may eventually lead to changes to rules

separate. For service areas, the state commission and the Commission must agree to redefinition of a rural service area simply after taking account of the Joint Board's recommendations. The Petitions here explain that the Joint Board's primary concern in disaggregating rural study areas was with the possibility of creamskimming. However, that concern has been addressed by Delta's and CenturyTel's disaggregation of their universal service support. In any event, even after a redefinition of a rural area, a state commission is still obligated to consider whether specific carriers' requests for designation as competing ETC complies with the Act. (The state commissions designate ETC without concurrence from the Commission.) For example, in considering a request for designation as an ETC, a state commission must ensure compliance with the requirements in § 214(e)(1), including the requirement to offer supported services throughout the areas for which designation is sought, and to advertise the availability of service. For rural companies, the state commission must find that designation of an additional ETC is in the public interest. And, a decision to disaggregate a rural service area would not limit a state commission's public interest inquiry when a competing carrier specifically requests designation as an ETC.

In fact, many of the objections to the Petitions made by the opposing parties are actually designation issues. For example, the parties contend that many rural areas cannot support multiple ETCs (NTCA comments, page 3), that competition could harm rural consumers (NTCA comments, page 3), that COPUC has ignored the public interest requirement in § 214(e)(2) (NTCA comments, page 4), and that competing ETCs may

in the future does not mean that the Commission should impose a moratorium on all requests for disaggregation of rural service areas pending the mere possibility of new rules.

receive universal support without "meaningful responsibilities" in a market with a limited customer base (Delta comments, page 15-16). All such objections are beyond the scope of this proceeding.

COPUC also notes that the parties urge incorrect standards for the Commission's consideration of the Petitions. Delta suggests that COPUC and the Commission must consider "future" Joint Board recommendations when deliberating upon a redefinition of a rural service area. (As a general matter, the novel proposition that proposals to redefine rural service areas consider future, non-existent recommendations by the Joint Board is impractical and obviously mistaken.) Presumably, Delta means that given the pendency of an existing Joint Board proceeding, the Commission should await the anticipated Joint Board recommendations. However, as noted above, no good reason exists to delay action on the Petitions. Similarly, USTA (pages 4-5) suggests that "the Joint Board must make a recommendation specifically with regard to a particular company as a basis of consideration by the Commission and the states regarding a change in the definition of service area for a rural carrier." Nothing in § 214(e)(5) or Commission rule supports this argument. Notably, the Commission's rule (47 C.F.R. § 54.207) which requires a state commission to submit its petition to redefine a rural area to the Commission, instead of the Joint Board, is clearly inconsistent with USTA's suggestion.

COPUC points out that the Commission has previously stated its intent to act expeditiously on state commissions' proposals to redefine rural service areas. *See RCC Holdings*, footnote 132. The parties suggestion of substantial delay in ruling on the Petitions is inconsistent with that intent.

C. COPUC Did Consider the Joint Board's Recommendations

The Petitions and COPUC's prior comments in these cases explain how COPUC has considered the Joint Board's recommendations regarding disaggregation of rural study areas. In its comments, USTA argues that COPUC Rule 11 is inconsistent with the § 214(e)(5) because it results in "automatic" redefinition of rural service areas. This is incorrect.

COPUC's decisions in which Rule 11 was adopted were, in great measure, prompted by the Commission's Fourteenth Report and Order.¹⁷ The Fourteenth Report and Order addressed the Joint Board's most recent recommendation regarding redefinition of rural service areas. COPUC's decision adopting Rule 11 considered the Joint Board's recommendations through its consideration of the Fourteenth Report and Order. *See* Delta Petition, pages 5-11.

D. COPUC Has Complied With The Act In Designating Competing ETCs

Finally, COPUC discusses its past decision designating competing ETCs. In accordance with § 214(e)(1), COPUC recognizes that competing ETCs must offer supported services throughout the service area for which designation is sought, and that such ETCs must advertise the availability of service. The parties' comments give the perception that wireless ETC's in Colorado are drawing high cost support while having no accountability to COPUC for the services they provide. This perception is inaccurate. Two facilities-based wireless providers have been granted ETC certification in the State of Colorado; Western Wireless in Docket 00K-255T, and North East Colorado Cellular (NECC) in Docket 00A-315T. ETC certification in these cases was based, in part, on

¹⁷ *In the Matter of the Federal-State Joint Board on Universal Service, Fourteenth Report and Order*, 16 FCC Rcd. 11244 (May 23, 2001).

those wireless providers stipulating to perform under most of the same service quality standards as their counterpart wireline rural providers under COPUC's rules. The stipulations on Western and NECC outline certain service requirements including: complaint and appeal policies, availability of service standards, adequacy of facilities standards, recordkeeping policies for customer complaints, retention of records requirements, standards for provision of services during maintenance or emergencies, standards for adequacy of service, network call completion requirements, standards relating to trouble report response, customer deposit requirements, standards relating to denial or discontinuance of service, customer billing requirements, directory listing requirements, maintenance of plant practices, and requirements for changing provider/carrier presubscription. In addition, each wireless provider stipulated that COPUC will be able to conduct the same type of audits as the Commission might conduct of a rural provider. With such requirements imposed on the wireless ETC's those carriers are operating under substantially the same rules as are rural wireline providers.

In the designation proceedings for Western Wireless and NECC, COPUC carefully examined public interest issues. Throughout the proceedings, many different aspects of public interest were reviewed including service quality, financial ability of rural providers to withstand competition, benefits of choice to rural customers, and promotion of universal service. COPUC, in these cases,¹⁸ determined that designation of a second ETC in certain rural areas was in the public interest. COPUC determined that increased customer choice was one of the most significant public interest benefits.

¹⁸ The decision designating NECC as an ETC was made by an Administrative Law Judge and became COPUC's decision by operation of law when no interested party appealed that decision.

Increased choices included the likelihood of different local calling areas, the availability of different products, increased service products and innovation, and potentially beneficial rates for end-users. In addition, in the NECC case COPUC found that some customers could avoid significant construction charges from the incumbent rural provider by taking service from NECC; this result promoted affordable universal service to these customers. COPUC notes that while the incumbent rural providers suggested that competition would harm them financially, those providers failed to present persuasive evidence as to how they would be adversely impacted.

COPUC also notes that it has now designated one facilities-based CLEC as an ETC *in four of the CenturyTel exchanges*. Under Commission Rule 54.207(c)(3)(ii), COPUC's Petition to disaggregate CenturyTel's study area to the wire center level was deemed approved on November 20, 2002 (90 days after filing with the Commission). Based upon the Commission's approval of the CenturyTel Petition (by operation of rule) COPUC designated San Isabel Telecom an ETC in four CenturyTel exchanges. San Isabel is a facilities-based CLEC using wireless technology to provide a local loop and is providing basic local exchange service subject to the same rules as the incumbent rural carrier it is competing against. Notably, *San Isabel is now preparing to provide service as an ETC in CenturyTel exchanges*. Reversing the redefinition of the CenturyTel service area at this point (*i.e.* construing CenturyTel's service area as comprising 53 separate wire centers) may reverse San Isabel's designation as an ETC and would clearly put this facilities-based CLEC at a competitive disadvantage.

Conclusion

For the reasons stated here, in the Petitions, and in prior comments, COPUC requests Commission agreement in redefining the service areas for Delta and CenturyTel. The Joint Board's primary concern in proceedings such as these has been the possibility of creamskimming on the part of competing ETCs. That concern, however, has been addressed by the rural carriers' prior decisions to disaggregate and target universal support to the wire center level. In light of those decisions, the Commission should promptly consider and concur in the Petitions.

Dated this 21 day of February, 2003.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within REPLY COMMENTS OF
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